

*In the Matter of William E. Bate, Code Writer 2 (Code Section) (PS6994N),  
Department of Labor and Workforce Development  
DOP Docket No. 2006-478  
(Merit System Board, decided May 10, 2006)*

William E. Bate, represented by Virginia A. Wolf, CWA Local 1034, appeals the determination of the Division of Selection Services (Selection Services) that he did not meet the requirements for the promotional examination for Code Writer 2 (Code Section) (PS6994N), Department of Labor and Workforce Development.

By way of background, the appointing authority issued a Notice of Job Vacancy for the title of Code Writer 2 (Code Section) on June 7, 2004. This provisional posting was open to employees in Labor Standards and Safety Enforcement who had one year of permanent continuous service in any professional title in ranges 19 through 23. Four individuals applied for the position as a result of this Notice of Job Vacancy. However, the appellant did not apply. As a result of the posting, the appointing authority provisionally appointed Carrie Hall on October 30, 2004, pending promotional examination procedures, to the title of Code Writer 2 (Code Section) within the Offices of the Assistant Commissioner and Director Labor Standards and Safety Enforcement unit scope (N966). This provisional appointment generated an examination announcement for the subject title with a closing date of July 21, 2005. The examination was announced open to applicants who had one year of permanent service in the title of Field Representative (Wage and Hour Compliance) and who were currently serving within unit scope N966. Ms. Hall, the appellant and one other individual applied for the subject examination. However, since only Ms. Hall was serving in unit scope N966, she was the only one deemed eligible. Therefore, the resulting eligible list consisting of Ms. Hall's name promulgated on December 8, 2005. On December 15, 2005, a certification consisting of Ms. Hall's name was issued to the appointing authority. As a result, Ms. Hall was permanently appointed to the title of Code Writer 2 (Code Section), effective December 15, 2005.

On appeal to the Merit System Board (Board), the appellant asserts that the examination should have been open to individuals in the title of Field Representative (Wage and Hour Compliance) within the Office of Wage and Hour Compliance unit scope (N995). Specifically, he asserts that as a result of the June 7, 2004 Notice of Job Vacancy, which was open to unit scope N995, Ms. Hall was provisionally appointed to the title of Code Writer 2 (Code Section) within unit scope N966. The appellant maintains that since both he and Ms. Hall had served in unit scope N995 at the time of the Notice of Job Vacancy, then the Promotional Examination Announcement (Announcement) should have been open to the same unit scope. The

appellant asserts that the appointing authority should not be allowed to use this “type of chicanery” to prevent employees from being promoted to another position. Moreover, he maintains that by allowing the appointing authority to limit the unit scope of the announcement to N966, the Department of Personnel (DOP) is allowing the appointing authority to use merit system rules to “subvert” the system, rather than to enhance the system.

Moreover, the appellant asserts that the posting of the Announcement violated Article 13 (Job Posting) of the collective bargaining agreement since it did not include a job description and because there was no evidence that the union had received a copy of the Announcement. The appellant also asserts that the Notice of Job Vacancy was incorrectly posted since it was only posted for seven days, rather than the 14 days required by Article 13.

In response, the appointing authority disputes the appellant’s allegation that the Notice of Vacancy was not posted for the full 14 days as required by Article 13. In this regard, it notes that the original Notice of Vacancy incorrectly indicated that it was to be posted from June 7 to June 14, 2005. However, a corrected Notice of Vacancy was posted from June 7 to June 21, 2005. In support, the appointing authority submits a copy of the corrected Notice of Vacancy. Moreover, the appointing authority asserts that the appellant may not challenge Ms. Hall’s provisional appointment since he did not apply for the provisional appointment in response to the Notice of Vacancy. Furthermore, the appointing authority notes that upon Ms. Hall’s provisional appointment, she was moved into unit scope N966, since that was where the vacancy existed. Therefore, Ms. Hall met the announced requirements on the Announcement that was issued by the DOP. Additionally, the appointing authority maintains that since the appellant was not serving in unit scope N966 at the time of the Announcement, he was correctly deemed ineligible for the subject examination. Finally, the appointing authority notes that in promotional situations, the examination is only announced in the unit scope where the vacancy exists. Therefore, in the instant matter the examination was announced correctly.

## **CONCLUSION**

*N.J.A.C.* 4A:4-2.6(a) provides that applicants shall meet all requirements specified in the promotional announcement by the closing date. *N.J.A.C.* 4A:4-2.6(a)2 provides that applicants for a promotional examination must be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement.

Initially, it is noted that Selection Services correctly determined that the appellant was not eligible for the subject examination since he was not serving in the correct unit scope (N966). Rather, he was serving in unit scope N995. *See In the Matter of Lyle Davis* (MSB, decided September 25, 2001) (Appellant properly found not eligible for an examination since he was not serving in correct unit scope). *See also In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., January 10, 1992). Although the appellant argues that limiting the examination to eligible individuals in unit scope N966 allowed the appointing authority to use merit system rules to “subvert” the system rather than to enhance the system, he has provided no evidence that the choice of the announced unit scope was a clear abuse of the appointing authority’s discretion, or not the actual location where the position exists. Moreover, there is no indication that the appointing authority attempted to manipulate or change unit scopes prior to the provisional appointment of Ms. Hall. In this regard, it is noted that it is common practice to announce a promotional examination open only to the unit scope in which the vacancy (*i.e.*, the provisional appointee) is in. *See In the Matter of Beth Kelly, et al., Deputy Administrator of Investigations and Field Operations (PS1480Q)*, *Office of the Public Defender* (MSB, decided September 22, 2004).

With regard to the appellant’s allegations that the Notice of Vacancy violated Article 13 of the collective bargaining agreement, the Board does not have jurisdiction to enforce or interpret grievance procedures or other items which are contained in a collective bargaining agreement negotiated between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is the Public Employment Relations Committee. *See N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-5.4(c)*. However, notwithstanding the foregoing, the Notice of Job Vacancy was corrected to reflect that it was posted for 14 days. The appellant also argues that the Announcement violated the contract since it did not contain a job description. However, the Announcement was for a promotional examination and as such was issued by the DOP. Moreover, there is no merit system regulation or rule that requires a job description to be contained on an examination announcement. Consequently, the subject promotional examination was properly announced.

## **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

Filename: IMO William E Bate.doc  
Directory: C:\Documents and Settings\rlema\Local  
Settings\Temporary Internet Files\OLK17  
Template: C:\Documents and Settings\rlema\Application  
Data\Microsoft\Templates\Normal.dot  
Title: In the Matter of William E  
Subject:  
Author: sdalton  
Keywords:  
Comments:  
Creation Date: 6/6/2006 12:23:00 PM  
Change Number: 3  
Last Saved On: 6/6/2006 12:54:00 PM  
Last Saved By: Administrator  
Total Editing Time: 6 Minutes  
Last Printed On: 6/13/2006 11:22:00 AM  
As of Last Complete Printing  
Number of Pages: 3  
Number of Words: 1,240 (approx.)  
Number of Characters: 7,068 (approx.)